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JUN 23 2006

OFFICE OF PETITIONS

In re Application of :
Cox et al. :
Application No. 10/026,384 :
Filed: December 21, 2001 : DECISION ON
For: SCENARIO BASED TESTING AND LOAD : PETITION
GENERATION FOR WEB APPLICATIONS :

This is a decision in response to the Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181, filed June 30, 2005. The delay in treating this petition is regretted.

This Petition is hereby **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly respond to the final Office action, mailed January 5, 2004. The Notice set a three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a).

Applicant filed an Amendment in response to the Office action on March 8, 2004. The response was mis-placed by the Office. Applicant was so notified in a Notice Under 37 CFR 1.251, mailed April 18, 2005.

Applicant filed a copy of the previously-filed Amendment that included a Certificate of Mailing under 37 CFR 1.8, along with a copy of a Return-Receipt postcard evidencing receipt by this Office

of the Amendment on March 11, 2004 (Certificate of Mailing dated March 8, 2004).

The Amendment failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action, mailed June 6, 2005.

No timely and proper response having been received, the application became abandoned on July 6, 2004. A Notice of Abandonment was mailed June 6, 2005.

Petition under 37 CFR 1.181

Applicant files the instant petition and asserts that the Notice Under 37 CFR 1.251 is an action within the meaning of 35 U.S.C. 133, such that an Applicant was given an extendable period of up to six months to respond to the Notice Under 37 CFR 1.251.

Applicant is advised that the application became abandoned for failure to timely and proper reply to the final Office action¹, and not for failure to timely reply to the Notice Under 37 CFR 1.251.

Applicant is further advised that the mechanism for replacing time that Applicants have lost resulting from the Patent Office misplacing applicant's paperwork is the Patent Term Adjustment.

Alternative venue

Applicant is strongly urged to file a petition stating that the delay was unintentional. An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required fee, currently \$750.00.

¹ 35 U.S.C. § 133 provides that "[u]pon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable. (Emphasis supplied).

37 CFR § 1.135. provides:

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).

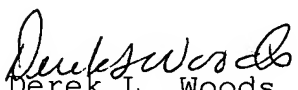
Further correspondence with respect to this matter should be addressed as follows:

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By FAX: (571) 273-8300
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Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.


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